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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/926,360

12/11/2001

Jean-Claude Pailles

214946US2PCT

9239

22850

7590

08/20/2008

OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER

WORJLOH, JALATEE

ART UNIT

PAPER NUMBER

3685

NOTIFICATION DATE

DELIVERY MODE

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ELECTRONIC

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AUG 19 2008

TECHNOLOGY CENTER 3600

Oblon, Spivak, McClelland, Maeir and Neustadt, P.C.
1940 Duke Street
Alexandria, Va 22314

In re Application of
Jean-Claude Pailles, et al.
Application No. 09/926,360
Filed: December 11, 2001
Attorney Docket No. 214946US2PCT
For: PAYMENT SYSTEM FOR SOFTWARE
PROGRAM USE

:
:
: RESPONSE TO PETITION
:
: WITHDRAW FINALITY
:
: OF REJECTION AS
:
: PREMATURE UNDER
:
: 37 CFR 1.181
:

This is in response to applicant's petition under 37 CFR 1.181 filed June 17, 2008, requesting withdrawal of the finality of the Office Action mailed March 18, 2008 as being premature.

The Petition is **DENIED**.

Applicant alleges that the final rejection mailed March 18, 2008 is premature because the examiner did not clearly explain the rejection to claims 24-35. Specifically, applicant alleges that the examiner should have afforded patentable weight to the "whereby" clauses found in the claims.

According to MPEP 1002.02(b)

"3. Petitions to invoke the supervisory authority of the *>Director of the USPTO< under 37 CFR 1.181 in matters not otherwise provided for."

According to MPEP 1201,

The Board will not ordinarily hear a question **>that< should be decided by the *>Director on petition<, and the *>Director< will not ordinarily entertain a petition where the question presented is **>a matter appealable to the Board<.

An applicant for a patent dissatisfied with the primary examiner's decision in the second or final rejection of his or her claims may appeal to the Board for review of the examiner's rejection. The issue at hand, is a difference in opinion concerning the denial of patent claims over the merits of the rejection in view of the prior art. More specifically, should patentable weight be given to Applicant's claimed "whereby" limitations. However, the appeal process has long been provided for to resolve these matters and the proper venue for making a

determination of whether or not claims are sufficiently distinct over the prior art is the Board of Patent Appeals and Interferences.

For the foregoing reasons, the finality of the office action of March 18, 2008 is proper.

Accordingly, the petition to withdraw the finality of the final office action mailed March 18, 2008 is denied.

Any questions regarding this decision should be directed to Calvin Hewitt at (571) 272-6709.



Wynn Coggins, Director
Patent Technology Center 3600
(571) 272-5350

CH/SNM: 8/12/08

